

LETTER OPINION
2006-L-11

March 27, 2006

Mr. Galen J. Mack
Pierce County State's Attorney
PO Box 196
Rugby, ND 58368-0196

Dear Mr. Mack:

Thank you for your letter asking whether, under the provisions of N.D. Const. art. VII, § 8, a candidate for election for sheriff must be a resident of the county at the time of the June primary election or the November general election. For the reasons indicated below, it is my opinion that a candidate for election for sheriff must be a resident of the county at the time of the November general election and not the June primary election.

ANALYSIS

Article VII, section 8 of the North Dakota Constitution provides, in part, that “[a] candidate for election for sheriff must be a resident in the jurisdiction in which the candidate is to serve at the time of the election.” You question whether the “time of the election” means the June primary election or the November general election. The “time of the election” language was inserted into N.D. Const. art. VII, § 8 as a result of an initiated constitutional measure approved by the voters on November 3, 1998.¹ This constitutional provision was further amended on June 11, 2002, into its current form.² Because the 1998 amendment was initiated by the people, there is little legislative history to shed light on the language in question. However, in construing the meaning

¹ See 1999 N.D. Sess. Laws ch. 565, § 1 (“A candidate for election must be a resident in the jurisdiction in which they are to serve at the time of the election. The office of sheriff shall be elected.”).

² See 2003 N.D. Sess. Laws ch. 576, § 1.

of the term “election” in this case, it is instructive to examine the nature and purpose of statewide elections in this state.³

Primary elections are held on the second Tuesday in June in every general election year for the purpose of “nomination of candidates” for certain federal and statewide offices, as well as judicial, legislative, and county offices,⁴ which would include the office of sheriff. General elections are held in all election districts in the state on the first Tuesday after the first Monday in November of each even-numbered year for the election of those officers.⁵

As the North Dakota Supreme Court has noted:

[A] primary election is not an election within the meaning of [current N.D. Const. art. IV, § 12], nor within the common acceptance of the term. It merely takes the place of the former nominating conventions, and it is improper to say that the successful candidate at such primary is elected to any office. He is merely placed in nomination as a candidate for election to the office.⁶

In describing the type of statewide elections held in North Dakota, the court later said:

Basically, we have three types of elections: primary, general, and special. All three may be statewide elections if all of the electors are entitled to vote in the election. A primary election is merely a nominating process and is technically not considered an election (citation omitted); but, because the election process is used and all of the electors of the state may participate in the nominating election procedure, it is a statewide election.⁷

These descriptions are consistent with the commonly understood meanings of those terms. A primary election has been defined as “[a]n election by the voters . . . to meet and nominate candidates of their party to stand at an approaching municipal or general

³ See State v. Hall, 171 N.W. 213, 224 (N.D. 1918) (rules of construction applicable to statutes apply in determining meaning of constitution); N.D.C.C. § 1-02-39(1) and (5) (in construing ambiguous statute, a court may consider the object sought to be attained and the consequences of a particular construction).

⁴ N.D.C.C. § 16.1-11-01.

⁵ N.D.C.C. §§ 16.1-13-01, 16.1-13-02.

⁶ Leu v. Montgomery, 148 N.W. 662, 663 (N.D. 1914).

⁷ Haugland v. Meier, 339 N.W.2d 100, 105 (N.D. 1983).

election.”⁸ A regular or general election means “[o]ne recurring at stated times fixed by law. A general, usual, or stated election. When applied to elections, the terms ‘regular’ and ‘general’ are used interchangeably and synonymously. The word ‘regular’ is used in reference to a general election occurring throughout the state.”⁹

Thus, the nature and purpose of a primary election in the state is to nominate certain candidates for public office, including elected county officials such as sheriffs.¹⁰ As a mere nominating process, it is not, as the North Dakota Supreme Court has noted above, technically even an election. Thus, candidates for sheriff in a county are nominated at the primary election and one is elected at the general election in November.

Based on the foregoing, it is my opinion that the provision in N.D. Const. art. VII, § 8, requiring a candidate for election for sheriff to be a resident of the county in which the candidate would serve at the time of the election, refers to the November general election and not the June primary election.

Sincerely,

Wayne Stenehjem
Attorney General

jjf/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹¹

⁸ Black’s Law Dictionary 518 (6th ed. 1990).

⁹ Black’s Law Dictionary 518 (6th ed. 1990).

¹⁰ N.D.C.C. § 16.1-11-01.

¹¹ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).